

U.S. Senate Republican
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S. 25 Obliterates High Court's "Bright Line" Speech Protection Standard

Citizens' Groups Alarmed by McCain-Feingold

S. 25 as modified would redefine the Supreme Court's definition of "express advocacy," set out in *Buckley v. Valeo* (1976). That landmark case protects the speech of advocacy groups by insisting that a political communication must -- in explicit words -- "expressly advocate the election or defeat of a clearly identified candidate" before it would be subject to federal regulation. The Court's *express advocacy* standard turns on the use of certain key words such as "vote for," "elect," "vote against," etc. This is the High Court's so-called "bright line" rule.

Groups, including the ACLU, the National Rifle Association, and National Right to Life, note with alarm the dramatic departure S. 25 takes from *Buckley's* "bright line" distinction between protected and unprotected speech, and how that effectively would silence much issue advocacy. Interestingly, the Federal Elections Commission has long sought to achieve what S. 25 seeks -- but in each attempt, has been stopped by a higher authority, the First Amendment.

S. 25's New "Bright Line" for Protected Speech: A High Hurdle

Section 201 would create a new and expanded statutory definition for *express advocacy* that affects groups' print and broadcast communications year around: "The term 'express advocacy' means a communication that advocates the election or defeat of a candidate by --

"(i) containing a phrase such as 'vote for', 're-elect', 'support', 'cast your ballot for', '(name of candidate) for Congress', '(name of candidate) in 1997', 'vote against', 'defeat', 'reject', *or a campaign slogan or words that in context can have no reasonable meaning other than to advocate the election or defeat of 1 or more clearly identified candidates*;

"(ii) *referring to* 1 or more clearly identified candidates in a paid [broadcast] advertisement within 60 calendar days preceding the date of a [primary and a general] election of the candidate...; or

"(iii) *expressing* unmistakable and unambiguous support for or opposition to 1 or more clearly identified candidates *when taken as a whole and with limited reference to external events*, such as proximity to an election. [italics added]."

The FEC Tried it and Failed; S. 25 Ventures Down the Same Path

The [attached paper](#) by RPC's counsel Lincoln Oliphant of May 1, 1997 is worth re-reading as the Senate continues to debate the merits of S. 25. It recounts the FEC's latest failed attempt to trample upon First Amendment rights.